

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2724 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ACCELERATED FREEZE DRYING CO LTD THOROUGH FACTORY MANAGER

Versus

GUJARAT ELECTRICITY BOARD  
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Appearance:

MR YS LAKHANI for Petitioner

MR TUSHAR MEHTA for Respondent No. 1

MR PRAVIN GONDALIYA for Respondent No. 2  
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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/04/98

ORAL JUDGEMENT

Rule. Service of Rule is waived by Mr. Tushar Mehta, learned Advocate for the respondent no.1 and by Mr. P.S.Gondalia, for the respondent no.2

2. The petitioner has filed this petition against G.E.B. seeking direction against G.E.B. for reconnecting the power supply of the Industrial Unit

purchased by petitioner situated at Veraval from respondent no.2. It appears that before petitioner purchased the Unit in question, 4 Civil Suits were filed which are pending and they are between respondent no.1 Board and respondent no.2 Company. The respondent no.2, pending these civil suits sold the Unit to the petitioner for a consideration of Rs. 3,75,00,000.00 without intimating the Board which has resulted into committing breach of a condition, as a result, though interim injunction was operating, the Board by issuing notice dated 23/01/1998 produced at Annexure : A disconnected the power supply alleging that the Unit is sold by respondent no.2 to defraud the creditor- Board by violating the terms of the agreement and condition of the supply of electricity.

3. The petitioner has shown its willingness to deposit the disputed amount as mentioned in Paras 2.1, 2.3 and 2.3 of the petition. It is pointed out by the Board that there is another suit filed by Board being Special Civil Suit No. 107 of 1993. The said suit appears to be of the same subject matter to that of Special Civil Suit No. 110 of 1990 which includes delayed payment charges also. It is also pointed out by Mr. Tushar Mehta, learned Advocate for the Board that respondent no.2 would also be liable to pay the amount of Rs. 2,15,327-23 Ps. for the months of April and May, 1993 as per General Audit Report dated 13/08/1997. It is also pointed out by him that Supplementary Bills for this amount are yet to be issued as per instructions received by him. Mr. Lakhani for the petitioner contended that such amount cannot be recovered being barred by the period of limitation and even otherwise, the same will have to be adjudicated.

4. Without entering into the merits of these controversies, in the facts and circumstances of the case, following directions will meet the ends of justice-

(1) 100% amount deposited by respondent no.2 i.e.

Rs.1,96,022-33 Ps. as per interim order of Trial Court in Special Civil Suit No.110 of 1990 filed by the respondent no.2 will be retained by the G.E.B. subject to the final disposal of the suit pending before the Civil Judge (S.D.), at Veraval.

(2) 25% amount deposited by respondent no.2 i.e.

Rs.26,336-00 as per interim order of trial court in Special Civil Suit No.106 of 1993 filed by respondent no.2 will be retained by the G.E.B.

subject to the final decision in the suit.

Remaining 75% of the amount i.e. Rs.79,007-43Ps.

will be deposited by the petitioner in the Court of Civil Judge (Senior Division) at Veraval within 15 days from today. Said 75% of the amount will be permitted to be withdrawn by the Board, and retained by it, subject to the final outcome of the said suit. This deposit of 75% of the amount shall be subject to the right of petitioner to recover from respondent no.2, which is dependent upon the out come of the suit.

(3) In two suits being Special Civil Suit No. 33 of 1990 and Special Civil Suit No.107 of 1993 filed by the Board against respondent no.2 and at present pending in the Court of the Civil Judge (S.D.) at Verava, the petitioner shall file an undertaking within 15 days from today to the effect that it shall pay the amount in case the decree is passed against the respondent no.2 subject to its right, if any, to recover the amount from respondent no.2.

(4) The petitioner shall file the applications for being joined as party defendant in all the above referred four Civil Suits and the court shall pass appropriate order. In case the petitioner is so joined as party-defendant, it shall be at liberty to defend the suit and/or to make appropriate submissions.

(5) The petitioner shall also deposit the amount of Rs.2,15,327-23 Ps. before the Board towards the payment of Supplementary Bills to be issued by the Board as per General Audit Report dated 13/08/1997 subject to the right of the petitioner and/or respondent no.2 to challenge such Bills before the competent Civil Court. Such deposit of Rs.2,15,327-23 Ps. by the petitioner shall be subject to the petitioner's right to recover the same from the respondent no.2. In case, the petitioner and/or respondent no.2 succeeds in the suit which may be filed against such Supplementary Bills, to be issued by the Board, the Board shall refund the amount to the petitioner with interest at the rate which may be determined by the Court at the conclusion of the trial. The Board shall issue Supplementary Bills for Rs. 2,15,327-23 Ps. within a week hereafter, if not issued so far, to enable the petitioner to deposit the amount; and if required

to challenge the same by the petitioner and/or the respondent no.2 before the Civil Court.

(6) The respondent no.1 G.E.B. shall forthwith reconnect the power supply at the factory premises of the petitioner at Veraval. The petitioner shall comply with all the requirements of the Board for availing of the electricity supply.

(7) The petitioner failing to comply with the directions given in Paras 4(2), (3) and (5) above, the direction to reconnect the power supply contained in Para 4(6) above shall be deemed to have been withhold, and it will be open to the Board to withhold electric supply, disconnecting the contacts & connection.

With the aforesaid directions, the petition is allowed to the aforesaid extent. Rule accordingly made absolute. No costs in the circumstances.

Direct service is permitted.

Date: 18/4/1998. -----

(ccs)